UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON THROUGH SYNDICATE 1036 ***Plaintiffs,*** **v.** **FAIRWAYS OFFSHORE EXPLORATION, INC.** ***Defendant.***	§ § § § § § § § § § § § § § § §	**CASE NO.**

ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, Certain Underwriters at Lloyd's, London through Syndicate 1036 subscribing to Insurance Policy No. 16EEDN10770 ("Underwriters"), file this, their Original Complaint for Declaratory Judgment (the "Complaint") pursuant to 28 U.S.C. §§ 2201 and 2202 and FED. R. CIV. P. 57 seeking construction of Insurance Policy No. 16EEDN10770 issued to Fairways Offshore Exploration, Inc. In support of their Complaint, Underwriters would show the Court as follows:

PARTIES

1. Underwriters consist of a foreign insurance syndicate subscribing to Insurance Policy No. 16EEDN10770, which was issued by Burnett & Company, Inc., a Louisiana Corporation with its principal place of business in New Orleans, Louisiana. For purposes of diversity jurisdiction, Underwriters are not citizens of the State of Texas.

2. Fairways Offshore Exploration, Inc. ("Fairways") is a Texas for-profit corporation with its principal place of business located at 13430 Northwest Freeway, Suite 900, Houston, Texas, 77040. Fairways may be served with process through its registered agent, Duane V. Naron, at 7010 S. Cross Lane, Spring, Texas 77379, or wherever he may be found. For purposes of diversity jurisdiction, Fairways is a citizen of the State of Texas. Underwriters request that summons be issued so that Fairways can be served.

JURISDICTION AND VENUE

3. Declaratory relief is proper in this action pursuant to 28 U.S.C. §§ 2201, *et seq*., and FED. R. CIV. P. 57. An actual controversy of justiciable nature exists between the parties regarding coverage afforded under the insurance policy identified in this Complaint and the relief requested herein is necessary to declare the parties' rights and obligations under said policy.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the parties are diverse in citizenship and because the amount in controversy exceeds $75,000, exclusive of fees and costs. The insurance policy at issue provides $20 million of coverage. Fairways has requested reimbursement under the policy for approximately $15 million in expenses, while Underwriters contend that coverage is only available for approximately $6 million of Fairways' claim.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 124(b) and § 1391(b)(1) because Fairways resides here and is subject to the Court's personal jurisdiction in this district.

BACKGROUND

6. On Underwriters' behalf, Burnett & Company, Inc. issued the Burnett Energy Exploration and Development Insurance Policy No. 16EEDN10770 to Fairways for the period of July 1, 2016 to July 1, 2017 (the "Policy"). (*See* **Exhibit 1**, Copy of Insurance Policy No. 16EEDN10770). The Policy provides $20 million of coverage with respect to Control of Well, subject to a $250,000 self-insured retention. The Policy was issued in line with the previously quoted terms and conditions at the instruction of Fairways' agent.

7. The Policy provides coverage, subject to its terms, conditions, exclusions, definitions, declarations, endorsements, and other language contained therein. (*Id.* at pp. 6, 18).

8. On July 16, 2016, Fairways initiated operations to permanently Plug and Abandon ("P&A") its South Timbalier Block 76, OCS-G-4460, D-1 Well, Offshore South Louisiana, Gulf of Mexico (the "Well"). Following demobilization to obtain additional equipment necessary for the operation, the Well was found to have developed a surface control of well incident (above the water line) on August 18, 2016. An uncontrolled flow of gas was discovered leaking from a casing flange located on the production tree of the Well and an increase in pressure on the surface, intermediate, and production casing strings was observed. A small amount of condensate dripping into the water created a visible sheen.

9. As a result of the well control incident, Fairways retained various well control contractors to conduct control of well operations in an effort to render the Well static and secure the wellbore prior to resuming the planned P&A operations.

Following a lengthy period of rigging up and testing of the well intervention equipment, access to the Well was accomplished on September 26, 2016. Additional work to control the Well continued through September and into October 2016.

10. As of October 20, 2016, the Well was brought under control and Fairways was able to re-enter the Well to proceed with fishing and/or its previously planned P&A operations under a pressure controlled environment. The use of on-site equipment allowed flow from the Well to be circulated out of the wellbore and bled-off/flared through the surface equipment.

11. Additional work continued on the then-controlled Well through at least December 2016.

THE INSURANCE POLICY

12. In pertinent part, the Policy reads as follows:

5. DUE DILIGENCE CLAUSE:

> It is a condition of this insurance that the insured shall exercise due care and diligence in the conduct of all operations hereunder, utilizing all safety practices and equipment generally considered prudent for such operations, and in the event any hazardous condition develops with respect to an insured well, the insured shall at their sole expense make all reasonable efforts to prevent the occurrence of a loss insured hereunder.

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15. WARRANTIES:

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> C. It is a condition of this insurance that the insured shall exercise due care and diligence in the conduct of all operations hereunder, utilizing all safety practices and equipment generally considered prudent for such operations. It is further warranted that in the event of a well becoming out of control or other escape or flow of

drilling fluid, oil, gas or water, the insured will use every endeavor to control the well or stop the escape or flow.

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COVERAGE PART A
CONTROL OF WELL

1. **COVERAGE**

Underwriters agree, subject to the applicable limit of liability, terms and conditions of this policy, to reimburse the insured (a) in regaining or attempting to regain control of any and all wells insured hereunder which get out of control, including any other well that gets out of control as a direct result of a well insured hereunder getting out of control, ***but only such costs and/or expenses incurred until the well is brought under control as defined in paragraph 2B of this Coverage Part A***; . . . .

2. **DEFINITIONS**

A. **WELL OUT OF CONTROL**

For the purposes of this insurance, a well shall be deemed out of control only when there is an unintended flow from the well of drilling fluid, oil, gas or water above or below the surface of the ground or water bottom, which flow cannot be stopped by use of the equipment or materials on site and/or the blowout preventer, storm chokes or other equipment required by the due diligence and warranties clauses herein; or which flow is declared out of control by the appropriate regulatory authority.

The mere existence or occurrence of a flow of oil, gas or water into the well bore will not be considered a well out of control ***if such flow can, within a reasonable period of time, be circulated out or bled off through the surface controls***.

B. **WELL BROUGHT UNDER CONTROL:**

A well shall be considered brought under control when it no longer meets the definition of "well out of control" and (i) ***the well can be re-entered for salvage, fishing, cleaning, drilling, workover, or plugging and abandoning operations*** or (ii) the well can be put back into production, or shut-in, or returned to a similar status which existed prior to the well being out of control.

PD.21384685.1

C. EXPENSES:

Expenses recoverable hereunder shall include costs of materials and supplies required, the services of individuals or firms specializing in controlling wells, and directional drilling and similar operations ***necessary to bring the well under control***, including costs and expenses incurred at the direction of regulatory authorities to bring the well under control, and other expenses included within Clause 1 of this Coverage Part A.

3. TERMINATION OF EXPENSES

In any circumstance and subject always to the applicable limits of this policy, underwriters' liability for costs and/or expenses incurred in regaining or attempting to regain control of a well ***shall cease when the well is brought under control as defined in paragraph 2.B of this Coverage Part A***.

(*See* **Exhibit 1**, at pp. 11, 15, 18 (emphases added)).

FAIRWAYS' CLAIM

13. Fairways has made a claim to Underwriters seeking reimbursement for expenses related to the well control incident in the amount of $15,617,741 for work performed on the Well through at least December 2016. However, because the Well was brought under control on October 20, 2016, the Policy only provides coverage for Fairways' expenses related to well control work performed from the date the well control incident was discovered—August 18—until the date the Well was brought under control—October 20. With respect to this August 18 to October 20 period, the parties have agreed to an adjusted claim amount of $6,427,374. But Fairways contends the Well was not brought under control until much later, entitling it to additional reimbursement of approximately $9 million.

Claim for Declaratory Judgment

14. An actual controversy has arisen and now exists between the parties hereto as to whether the expenses incurred by Fairways are fully covered by the Policy.

15. As of October 20, the Well's previously uncontrolled flow could be bled off and/or flared within a reasonable period of time through the use of surface controls and onsite equipment. Additionally, as of that date, the Well was and/or could be re-entered for fishing and/or continued P&A operations. Accordingly, the Well was brought under control per the Policy's terms as of October 20 and the Policy's coverage with respect to out of control well expenses ended on that date.

16. Pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57, Underwriters now seek a declaration that coverage does not exist as to all of the claims/expenses of Fairways. More specifically, Underwriters seek a declaration that: (a) the Well was brought under control in accordance with the Policy as of October 20, 2016; (b) there is no coverage under the Policy for Fairways' well control expenses incurred for work performed after the Well was brought under control on October 20, 2016; (c) Underwriters have no obligation to indemnify Fairways for any claims or expenses Fairways incurred with respect to the well control incident for work performed after October 20, 2016 because the Well was brought under control as of that date; and (d) Underwriters are only liable under the Policy to Fairways in the amount of $6,427,374 for expenses incurred by Fairways with respect to the well control incident for work performed before October 20, 2016.

PRAYER & CONCLUSION

17. After consideration of this matter, either by way of trial or dispositive motion, Underwriters pray this Court order and declare the following:

a. That the Well was brought under control pursuant to the Policy as of October 20, 2016;

b. That there is no coverage under the Policy for Fairways' well control expenses incurred for work performed after the Well was brought under control on October 20, 2016;

c. That Underwriters have no obligation to indemnify Fairways for any claims or expenses Fairways incurred with respect to the well control incident for work performed after October 20, 2016 because the Well was brought under control as of that date;

d. That Underwriters are only liable under the Policy to Fairways in the amount of $6,427,374 for expenses incurred by Fairways with respect to the well control incident for work performed before October 20, 2016; and

e. That Underwriters receive all such other and further relief, whether general or special, at law or in equity, to which they may show themselves otherwise entitled.

Respectfully submitted,

BY: */s/ Marcus R. Tucker*

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